IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4833 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO.LTD.

Versus

KALABHAI JETHABHAI DECD. THRO'HEIRS NIMUBEN WD/O KALABHAI

Appearance:

MR PV NANAVATI for Appellant

MR AMAR D MITHANI for Respondents No. 1/A to 1/D

Respondent nos.2 & 3 served.

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. On a joint request of learned counsel, this appeal is taken up for hearing today, since the same is on the special final hearing board.

2. We have heard the learned counsel for the appellant and learned counsel for the original claimants.

3. This is an appeal by the Insurance Company challenging the award under section 140 of the Motor Vehicles Act, 1988. Obviously, this award is in the nature of an interim award which is subject to adjustment against the final award which may be passed in the main claim petition pending before the Motor Accident Claims Tribunal. This principle is established by the Supreme Court decision in the case of The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala, reported at 2001(4) JT 477.

4. As a result of the hearing and discussion, a consensus has been arrived at between the learned counsel on the basis of which it is directed that the original claimants shall file an undertaking before the Tribunal within four weeks of the service of this order on the claimants, to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause, and that the claimants shall pursue the main claim petition on merits.

5. On the said undertaking being filed, the amount of this award may be withdrawn by the original claimants on furnishing security to the satisfaction of the Tribunal.

6. Subject to the observations and directions hereinabove, this appeal is dismissed with no order as to costs.

7. The amount deposited in the Registry, if any, by the appellant shall be transmitted to the Tribunal forthwith i.e. not later than 20th October 2001.

8. Direct service is permitted.

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